

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

109

RSA-4943 of 2019(O&M)
Date of Decision: 21.09.2023

Mukesh Aggarwal

....Petitioner

Versus

Avtar Singh and another

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Dinesh Nagar, Advocate
for the appellant.

SANJAY VASHISTH, J.(Oral)

1. Present regular second appeal has been filed by the appellant/plaintiff-Mukesh Aggarwal, against the concurrent findings of dismissal of the civil suit.

2. Appellant/plaintiff-Mukesh Aggarwal instituted a civil suit for recovery of Rs.20,00,000/- from defendant No.1- Avtar Singh and defendant No.2-Amar Singh alongiwth interest @ 12% per annum from the date of filing of suit till its realization. The pleaded facts by the plaintiffs are that to purchase the land measuring 12 Bigha 18 Biswa in the Village Basma, District Mohali, one agreement to sell dated 15.03.2010 was executed between the plaintiff (vendee) and defendants(vendor). Total sale consideration was fixed as

Rs.1,41,90,000/- and an amount of Rs.20,00,000/- was paid by the plaintiff as earnest money to the defendants at the time of agreement to sell dated 15.03.2010.

Plaintiff further pleaded that later on, he came to know of the fraud played by the defendants because the land projected for sale was not the same land, which was shown to him before entering into the agreement to sell. Plaintiff also pleaded that on the target date of registration and execution of sale deed i.e. 12.05.2010, plaintiff remained present in the office of Sub Registrar, Derabassi for execution and registration of the sale deed, but, the defendants did not turn up for performing their part of contract/agreement. Therefore, plaintiff did not make the payment of Rs.10 lacs towards part payment payable to defendants on or before 24.03.2010.

3. In the joint written statement filed by the defendants, apart from the formal objections, defendants pleaded that they were always ready and willing to perform their part of contract/agreement and even remained present in the office of Sub Registrar, Derabassi on 12.05.2010, but plaintiff was not having the money with him and thus, failed to pay a sum of Rs.10 lacs as part payment, which was to be paid on or before 24.03.2010. Even, entire balance sale consideration was not possessed by him on or before 12.05.2010. One legal notice dated 20.05.2010 for calling the plaintiff to get the sale deed executed and registered was also issued. As per said legal notice, plaintiff was asked to come present in the office of Sub Registrar, Derabassi on

02.06.2010, but plaintiff again failed to pay the balance sale consideration on that very day. Thereafter, another legal notice dated 14.06.2010 was also issued intimating the plaintiff that the agreement to sell dated 15.03.2010 stands cancelled and the earnest money paid by him stands forfeited.

After completion of the pleadings, vide order dated 16.03.2012, learned trial Court framed following six issues:

- '1. Whether the plaintiff is entitled to recovery a sum of Rs.20 lacs alongwith interest as prayed for ?OPP*
- 2. Whether suit is not maintainable?OPD*
- 3. Whether this Court has no jurisdiction to try the present suit?OPD*
- 4. Whether no cause of action has arisen in favour of plaintiff to file present suit?OPD*
- 5. Whether no proper court fee has been affixed on the plaint?OPD*
- 6. Relif.'*

4. Learned Trial Court observed in paragraph No.11 that plaintiff has taken different plea at different stages. It is admitted by the plaintiff in the witness box that he came present in the Office of Sub Registrar, Derabassi on 12.05.2010 for execution and registration of the sale deed in his favour, but, he was not carrying any money with him.

In the complaint to the S.S.P., Mohali, plaintiff alleged that he has been defrauded by Gurpreet and Mandeep Singh Sandhu, whereas in the present suit, a separate plea has been taken that he was shown different land by the defendants which itself shows that even plaintiff himself is not clear about the actual factual position of the

case. Thus, no one else can be held responsible for not performing the part of contract/agreement except the plaintiff himself.

As far as the plea of the defendants of their being no willingness and readiness on the part of the plaintiff to perform his part of agreement to sell is concerned, it is amply clear that on the one hand, plaintiff to perform his part of agreement to sell is concerned is admitting visiting the office of Sub Registrar for the purpose of execution of the sale deed alongwith its registration on the target date i.e. 12.05.2010, but on the other hand, he himself is admitting that he was not carrying money with him on that day.

5. Even First Appellate Court has also noticed the submissions addressed by the plaintiff, regarding applicability of Section 73 and 74 of the Indian Contract Act, 1872 and held that they are not applicable in the facts and circumstances of the present case. Still, plaintiff has brought attention of the Court to Section 73 and 74 of the Indian Contract Act.

6. Undoubtedly, in the present case as already observed, it has been held that because of the fault of the plaintiff himself, the sale deed could not be executed, therefore, the provision of the Section 73 and 74 of the Indian Contract Act, 1872 would not be of any help to the plaintiff because he himself has broken the agreement/contract.

Finding given by the learned First Appellate Court is as under:

'15. The argument of the Id Counsel for the appellant with regard to application of Section

73 and 74 of the Contract Act, is without any substance. In case of M/s Kailash Nath (Supra) relied upon by the ld. Counsel for the appellant, the facts were entirely different and the buyer was not at fault and in those circumstances Hon'ble Supreme Court has held with regard to the entitlement of the buyer. There is no such circumstances in the present case and the plea taken by the plaintiff at different stages shows that in fact he is at fault in not complying the sale transaction and hence he cannot be allowed to take benefit of his own wrongs. It is highly improbable that the plaintiff would make payment of huge amount of Rs. 20 lakhs without ascertaining the identity and location of the suit property. The plea taken by the plaintiff is nothing but an after thought to come out of the terms and conditions of the agreement and to recover the money given as earnest money. If the conduct of plaintiff himself is doubtful and unfair, lacking the efforts for concluding the sale transaction, he is not entitled to the return of the earnest money in view of the forfeiture clause in the agreement Reference here can also be made to judgment in case of Gurjinder Singh vs Paramjit Kaur and another 2017(5) RCR Civil 155. In case of Maula Bux vs Union of India 1969 (2) SCC 554 it was held by the Hon'ble Apex Court that forfeitue of earnest money under a contract for sale of property-movable or immovable- if the amount is reasonable, does not fall within section 74. Similar ratio has been laid down in case of Shree Hanuman Cotton Mills and anr vs Tata Aircraft Ltd. AIR 1970 SC 1986The ld. Trial Court has taken into consideration the entire facts coming on the file and rightly dismissed the suit filed by the appellant-plaintiff.'

7. I have considered the submissions addressed by learned counsel for the appellant and gone through the impugned judgment and decree passed by both the Courts below.

8. There is concurrent finding that plaintiff was not ready and willing to buy the land in question on the target date fixed for execution and registration of the sale deed as he was not possessed with the balance sale consideration in the office of Sub Registrar

itself. No question of law much less substantial question of law arises in the instant appeal for the consideration of this Court. Consequently, the impugned judgments and decree passed by both the Courts below are hereby maintained and the present appeal stands dismissed.

9. As the appeal has been dealt with on merits, there is no need to pass any separate order in the application i.e. CM No.14062-C of 2019 seeking condonation of delay of 86 days in filing the appeal, thus, same also stands disposed of.

September 21, 2023	[SANJAY VASHISTH]
<i>rashmi</i>	JUDGE
Whether speaking/reasoned	yes/no
Whether reportable?	yes/no